

**This factsheet is for parents and expectant parents of babies. It does not cover paternity leave for adoptions. If you or your partner are adopting a child, see our Adoption factsheet for more specific information.**

If you are an employee, you may have a legal right to paternity leave and pay at a flat rate of £123.06 a week or 90% of your normal pay if it is less than that. If you are eligible, you have a right to one week or two consecutive weeks of leave from work following birth. You may also be entitled to Statutory Paternity Pay during your leave.

Your employer may give you better rights to paternity leave and pay under your contract, for example they may give you a few days or a week on full pay, which is more than the amount they have to give you by law. Your employer can give you more than the statutory minimum but, if you are entitled to the statutory minimum, your employer cannot give you less than this.

If you are self-employed, you do not have a right to paternity leave or pay. You can take unpaid leave if you choose to do so, but there are no benefits you can claim for paternity leave. If you are not an employee, but you work for an agency or on a freelance basis, and tax and NI are deducted before you get paid, then you can claim Statutory Paternity Pay, as long as you earn enough and have worked there for long enough (see below). You do not have the right to paternity leave however, which means that after your time on Statutory Paternity Pay you do not have the right to return to the same job.

## Who can take paternity leave?

In order to be eligible employees must:

- have or expect to have responsibility for the child's upbringing,
- be the biological father of the child or the mother's husband, civil partner or partner,
- have worked continuously for their employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby is due (see below)

and

- still be employed by the employer on the day the child is born.

To work out the 15<sup>th</sup> week before the baby is due, take the Sunday before the due date (unless your baby is due on a Sunday, in which case use the due date) and count back 15 weeks. This is the start of the 15<sup>th</sup> week, known as the qualifying week. As a rough guide, if you have worked for your employer since before the mother got pregnant, you will meet the continuous employment test. However, it is useful to know the qualifying week as it affects lots of other rights, including when you give notice.

Paternity leave can be taken by more than one person for the same baby, as the biological father, the mother's spouse/civil partner and the mother's cohabiting partner could all be eligible.

If you are not married or in a civil partnership with the mother, you count as her partner if you live with her in an 'enduring family relationship', but you are not a close blood relative. This applies to opposite sex and same sex partners. Relatives of a pregnant woman cannot take paternity leave, for example where their daughter is pregnant; they would have to take some other form of leave instead (see our factsheet *Time Off* for information on other leave).

## When can leave be taken

You should give your employer notice to take your leave (see sample letter). You can choose to take one or two consecutive weeks. You do not have a legal right to take paternity leave in days or in two separate weeks, but if you need to do this, you can always ask your employer if it is possible.

Leave can be taken:

- from the date of the baby's birth, whenever that takes place
- from a chosen number of weeks after the date of the baby's birth (whenever it is born) *or*
- from a chosen date which falls at any point after the due date, as long as the leave is completed within 56 days of the birth (but see below for premature babies).

Leave can start on any day of the week but must usually be completed within 56 days of the actual birth. However, if the baby is born early, leave must be completed within the period from the *actual* date of birth up to 56 days after the *expected* week of birth. This means that parents of premature babies have a longer period after the birth in which to take paternity leave. If you are working on the day that the baby is born, and you have said you want your leave to begin from the birth, your leave will start the next day.

There is only one period of leave available even if more than one child is being born. If a baby is stillborn after 24 weeks of pregnancy, or is born alive at any time but then dies, you have the right to take paternity leave as usual.

## Notice period for leave

You should inform your employer of your intention to take paternity leave by the fifteenth week before the baby is expected, unless this is not reasonably practicable. If you have missed this deadline, inform your employer as soon as possible, and explain why you did not give notice earlier. An employer will sometimes accept a delay in giving notice. For what to include in your notice,

see below. It is usually convenient to give notice to claim Statutory Paternity Pay at the same time (see sample letter).

### **Pay**

Most employees who are entitled to paternity leave will also be entitled to Statutory Paternity Pay (SPP). It is paid at a rate of £123.06 per week (from 6 April 2009) or 90% of average weekly earnings if this is less. Average weekly earnings are based on your earnings in the eight weeks ending with the 15th week before the baby is due. If you are paid monthly, it is usually based on the last two pay dates before the end of the 15<sup>th</sup> week. However, if your average weekly earnings in this period are less than the lower earnings limit (£95 a week from 6 April 2009), you will not qualify.

An employer cannot pay SPP without a written declaration that the employee meets the conditions, including that they will be responsible for the baby's upbringing (see sample letter).

### **Notice period for pay**

You are required to give 28 days notice of the date from which you want your SPP to start. It is usually convenient to give notice for leave and pay at the same time (by the end of the 15<sup>th</sup> week before the baby is due). If you cannot give 28 days notice, for instance because the birth was premature, you must give notice as soon as reasonably possible and explain why there has been a delay. Your employer will usually still be able to pay you.

If your employer decides you are not entitled to SPP, they should give you a written decision within 28 days. If they do not give you a decision, or you think the decision is wrong, you can ask the Revenue (Her Majesty's Revenue and Customs or HMRC) to make a decision for you. See our factsheet *Enforcing your benefit rights* for more information about what to do if you have a problem getting your SPP.

### **Managing financially during paternity leave**

Additional financial help for your family may be available from Income Support, Housing Benefit, Council Tax Benefit, Tax Credits, or a Sure Start Maternity Grant. If you are entitled to paternity leave, but your employer does not pay you anything (because you do not earn enough), you may be able to claim Income Support. Income Support may also be payable if, immediately before your paternity leave, you are getting Housing Benefit, Council Tax Benefit, Working Tax Credit, or Child Tax Credit of more than the family element. You can only get Income Support if your other income (including any paternity pay) is low enough. If you want more advice about this, you can call the Working Families helpline.

If you are entitled to SPP, but are concerned that it will not be enough to support your family, you might consider taking some annual leave around the birth of the child instead. This means that you would receive full pay. You should discuss taking annual leave with your employer in the usual way.

### **How to give notice for leave and pay**

Written notice for leave and pay can be given together by the end of the 15<sup>th</sup> week before the baby is due. If you have not given notice by this date, give it as soon as possible. Your employer may ask you to use form SC3, which is provided by the Revenue (HMRC), or to use the employer's own version of the form, but your notice does not have to be on a form, as long as you give all the information required (see sample letter). If you want to use form SC3 to make sure you include all the required information, but your employer has not given you a form, you can ask your employer or find it on the Revenue's website.

For leave you must state:

- When the baby is expected to be born (or the date of birth if the baby has already been born),
- Whether you want to take one or two weeks leave AND
- When you want your leave to start.

For pay you must also state:

- Whether you want to receive one or two weeks' Statutory Paternity Pay and when you want your pay to start AND
- That you are the baby's father/mother's partner, will be responsible for the baby's upbringing, and that you will care for the child or support the child's mother whilst getting SPP.

If you are applying for your leave and pay after a baby is born (for example, because the child arrives early, or you did not realise you had to give advance notice), remember that you must also state the actual date of birth. If you have given notice to your employer to take leave from the child's birth, or from a set number of days after this, then you should let them know when this happens.

Below is a sample letter for a birth child:

5 June 2009

Name of employee: Stavros Christodoulides

National insurance number: AB123456

Dear Mr Harris,

My partner is expecting a baby and I will have joint responsibility for the upbringing of the child. I am the baby's biological father (or married to the mother/in a civil partnership with the mother/living with the mother in an enduring family relationship, but not an immediate relative). I am applying to take time off work to support my partner and care for the child.

The expected date of birth for our baby is 18 September 2009. I would like to start my paternity leave the day the baby is born, whenever this occurs, and to receive my paternity pay from this date, but I understand that if I am at work when the baby arrives, my leave and pay will start the day after. I would like to take 2 weeks leave and pay.

Yours sincerely,

Stavros Christodoulides

### **Other rights to take leave**

There are two other legal rights which may be useful to fathers, Time Off for Dependents and Parental Leave. Please see our factsheet *Time Off* for more information on these.

## Flexible Working

More and more fathers are requesting flexible working so they can better balance work with family life. If you are interested in requesting a flexible working pattern then see our *Flexible Working* factsheet or call our helpline.

## Taking Matters further

Your employer should not prevent you from taking leave, or from trying to use your rights in circumstances where you are entitled to them. You must also not be subject to less favourable treatment by your employer because you have taken leave or tried to use rights to which you are entitled.

If you want to take matters further because you are prevented from using your rights, treated less favourably or dismissed, you can get more information in our factsheet *Enforcing your employment rights*.

In disputes about SPP, if your employer refuses to pay or fails to make a decision, or you disagree with the amount of your SPP, you can ask the Revenue to make a formal decision on your entitlement. See our factsheet *Enforcing your benefit rights* for more information.

Mearns on 020 7017 0072

## Useful contacts

[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

## Working Families

Registered Charity No 1099808

1-3 Berry St, London, EC1V 0AA

Company No 4727690

Helpline: 0800 013 0313

E-mail

[edads@workingfamilies.org.uk](mailto:edads@workingfamilies.org.uk) or

[advice@workingfamilies.org.uk](mailto:advice@workingfamilies.org.uk)

or txt 07800 004722

Orderline for free factsheets: Kate

Aresti on 020 7253 7243

Waving not drowning project for

parents of disabled children: Janet

**Working Families** has published *Daddy's Home – a life planner* for fathers which offers advice and case studies from real dads who have changed their working patterns

## **ACAS**

Free advice line giving employment law advice

Telephone: 0845 747 47 47

Minicom: 08456 06 16 00

[www.acas.org.uk](http://www.acas.org.uk)

In Northern Ireland: [www.lra.org.uk](http://www.lra.org.uk)

## **Citizens Advice Bureau**

You can find out where your nearest Citizens Advice Bureau is from the phone book or, in England and Wales,

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk).

Their advice website is at [www.adviceguide.org.uk](http://www.adviceguide.org.uk) for advice on a whole range of issues from employment to benefits and debt advice.

In Scotland, [www.cas.org.uk](http://www.cas.org.uk)

In N. Ireland,

[www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

## **Community Legal Advice**

For finding a solicitor with the CLS quality mark in your area of England and Wales.

Telephone: 0845 345 4 345

Minicom 0845 609 6677

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

## **Employment Tribunal Enquiry Line**

Telephone orderline: 0845 795 9775

Minicom: 0845 757 3722

[www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)

In Northern Ireland:

[www.employmenttribunalsni.co.uk](http://www.employmenttribunalsni.co.uk)

## **The Commission for Equality and Human Rights**

Advice and information about discrimination and human rights.

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

[info@equalityhumanrights.com](mailto:info@equalityhumanrights.com)

England: phone 0845 604 6610,

textphone: 0845 604 6620

Wales: phone 0845 604 8810,

textphone 0845 604 8820

Scotland: phone 0845 604 5510,

textphone 0845 604 5520

In Northern Ireland:

[www.equalityni.org](http://www.equalityni.org)

**Fatherhood Institute**

9 Nevill Street, Abergavenny, NP7  
5AA

[www.fatherhoodinstitute.org](http://www.fatherhoodinstitute.org)

[mail@fatherhoodinstitute.org](mailto:mail@fatherhoodinstitute.org)

0845 6341328

Information for fathers. Previously  
known as Father's Direct

**Her Majesty's Revenue and  
Customs**

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

**Law Centres Federation**

To find out if there is a free legal  
advice centre in your area

Third Floor

293-299 Kentish Town Road

London NW5 2TJ

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

[info@lawcentres.org.uk](mailto:info@lawcentres.org.uk)

020 7428 4400

The advice given in this  
factsheet is accurate at April  
2009. It may not be accurate after  
that date.

*Working Families operates a  
complaints procedure to ensure  
any complaints are dealt with  
thoroughly and fairly. If you would  
like to have details of the procedure  
or to make a complaint please  
contact the Chief Executive at  
Working Families.*

**Working Families needs your  
help! Donate online at  
[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk) or  
visit the Working Families  
webshop and help us to raise  
vital funds:  
[www.buy.at/workingfamilies](http://www.buy.at/workingfamilies)**

If you require a copy of  
this leaflet in large print,  
please call 020 7253 7243

**Community  
Legal Service**

